IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1757 OF 1988

1.K.S. Kulkarni, Indian Inhabitant)
residing at Type 2B, 35, IIT Campus,)
Pawai, Bmbay-400 076.)
2.T. Gopalkrishnan, Indian Inhabitant,)
residing at No.14, Padmavati Co-op.)
Society, Opp. to IIT Market, Pawai,)
Bombay-400 076.)
3.P.N. Baba Prasad, Indian Inhabitant)
residing at Type 2-B, 28, IIT Campus,)
Pawai, Bombay-400 076.)
4.M.S. Bidarkundi, Indian Inhabitant,)
residing at 2B - 56 IIT Campus, Pawai)
Bombay-400 076.)
5.M.K. Subhedar, Indian Inhabitant,)
residing at 2B, 109, IIT Campus)
Pawai, Bombay-400 076.)
6.Mrs. CSR Iyer, Indian Inhabitant,)
residing at E9, Gyankunj, Opp.IIT)
Market, Pawai, Bombay-400 076.)..PETITIONERS

Versus

Indian Institute of Technology,)
Pawai, Bombay-400 076.)..RESPONDENTS

WITH

WRIT PETITION NO.922 OF 2000

1.Dr.M.S. Bidarkundi,)
residing at 2B - 56)
Lake Side Qtrs., IIT Campus, Pawai)
Bombay-400 076.)
2.Dr.M.K. Subhedar,)
residing at 2B, 109,)
Lake Side Qtrs., IIT Campus)
Pawai, Bombay-400 076.)
3.Dr.P.N. Babaprasad,)
residing at C-57, Central Side Qtrs.)
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4.Dr. A.J. Moghe, residing at)
16, Pradnya Gokhale Road,)
Mulund (E), Mumbai-400 081.)
5.Dr. M.S. Khanwalkar, residing at F9,)
Nutan Sandesh 19-20, Garodia Nagar)
Ghatkopar (E), Mumbai-400 077.)
6.Mr. S.S. Naik, residing at C-98,)
Central Side Qtrs., IIT Campus,)
Mumbai-400 076)..PETITIONERS

Versus

1.Indian Institute of Technology,)

Powai, Bombay-400 076.)

2.Union of India, through the Ministry)

of Human Resources Development,)

Department of Education, New Delhi)..RESPODNENTS

Mr. J.P. Cama i/b. Mr. K.P. Anilkumar for the Petitioners in both petitions.

Mr. C.U. Singh with Mr. K.P. Jain i/b. Bhaishankar Kanga & Girdharlal for Respondents in both petitions.

CORAM: F.I. REBELLO & S.R.SATHE, JJ.

DATE : 7th July, 2004

JUDGMENT (PER F.I.REBELLO J.):

. Both these petitions are being disposed of by this common judgment as similar questions of law arise for consideration. Some of the petitioners are common to both the petitions.

2. In Writ Petition No.1757 of 1988 the principal relief was for striking down the transfer of the petitioners to the non-academic/technical section of the respondent organisation and for further relief by way of mandamus to direct the respondents to re-classify the petitioners as academic staff. Relief was also sought to strike down the resolution of the Board of Governors of the Respondent organisation dated 19th February, 1988. According to the

petitioners that resolution would result in denial to the petitioners the opportunity of being appointed/promoted to the rank of post of Scientific Officers/Lecturers.

3. In Writ Petition No.922 of 2000 the principal relief sought by the petitioners is that the petitioners are eligible for the enhanced age of superannuation of 62 years as per the Government of India directives dated 31st August, 1998 and its subsequent clarifications. The second relief is for a direction to direct the respondents to implement the Government of India, HRD Ministry Directives dated 31st August, 1998 along with its clarifications and to apply to the petitioners the enhanced age of superannuation of 62 years prescribed therein. The alternative relief to the prayers was to strike down the said directive dated 31st August, 1998 together with its clarifications to the extent that it excludes the petitioners as a class from its coverage and similarly to strike down the resolution dated 15th June, 1999 to the extent that it is read as excluding the petitioners from coverage thereunder. Interim reliefs were also sought. The learned Division Bench by order of 29th August, 2000 while granting Rule was also pleased to grant interim relief in terms of prayer clause (e) which was that pending the hearing and final disposal of the petition that this Honoruable Court be pleased to restrain the respondents from superannuating the petitioners on

reaching the age of 60 years and until they reach the age of 62 years. The same was challenged by the respondents before the Apex Court by Civil Appeal No.2414 of 2001. While disposing of the matter the Apex Court was pleased to observe as under:-

> "The age of superannuation is a condition of service and unless and until the Laboratory Superintendents are treated to be academic staff, they cannot claim to be entitled to continue till 62 years, which is the age of superannuation for academic staff. The question for consideration before the High Court therefore would be, taking into account the duties discharged by these Laboratory Superintendents, can they be held to be "academic staff"? In the event ultimately the petitioners would succeed before the High Court, then they would be entitled to get the compensation for the period for which they have been illegally denied their continuance. In the event, however, the writ petition will ultimately stand dismissed, then by interim order they would be allowed to usurp the public office which ordinarily they would not be entitled to. In this situation, we are of the considered opinion that the High Court committed error in granting the interim direction. We therefore quash the interim order dated 27th of September, 2000 and

request the learned Chief Justice of Bombay High Court to get the Writ Petition heard at an early date."

4. It will be necessary to refer to some facts set out in Writ Petition No.922 of 2000 along with the reply filed on behalf of the respondents. The facts in the petition are based on the pleadings and reply in Writ Petition No.922 of 2000. Reference to Petitioner and Respondents is as they are shown in the common title in Writ Petition No.922 of 2000.

. The petitioners hold degrees of M.Sc., and/or Ph.D. in physics and at that time were working as Laboratory Superintendents (Group-A Officers) in the Department of Physics. It is their case that they enjoyed the pay scale which are on par with those of teachers in the Respondent Institute. The respondent No.1 has been constituted under the Institute of Technology Act, 1961. The statutes have been framed under the Act which govern the classification and the terms and conditions of service of the employees. It is the case of the petitioners that by the petition they are challenging the inaction on the part of the respondents in not treating them as being entitled to be superannuated at the age of 62 years although they are so entitled. This has been done in the case of other members of the teaching staff as also some members of the non-teaching staff. This inaction on the part of the respondents, it is contended, is

arbitrary and discriminatory.

. The petitioners 1 to 3 were employed initially as Junior Research Assistants/Senior Research Assistants when they were classified as Academic Staff. It is their case that they were given to understand that they would be confirmed in the academic section and accordingly would be accordingly promoted in the said Section. The petitioner Nos. 4 to 6 are highly qualified scientists employed initially as Junior/Senior Technical Assistants. It is the case of the petitioners that irrespective of the designations their activities have always been of an academic nature. They were also required to conduct Laboratory Courses which forms part of the academic curriculum of the students. As part of the curriculum the petitioners conducted classes wherein they were required to teach and/or instruct and explain to the students the experiments to be performed. The students maintain journals of these experiments which the petitioners are required to evaluate. The petitioners also conducted the semester examination, the viva voce and awarded marks for the same. The students have to perform well in the Laboratory courses as their performance affects their grades and consequent passing in the particular semester. The petitioners in order to assist the students have been called upon from time to time to prepare Laboratory manuals which are in printed form and given to students for study purposes. In the past

the petitioners also took tutorials for several years which has been discontinued for the reasons best known to the respondents. The Laboratory Courses are taken by the faculty as part of their work load. They have also been called upon to examine papers in physics for the entrance examination to the IIT. The petitioners as such, it is submitted, belong to the teaching faculty.

5. It is the case of the petitioners that in or around 1974 the non-academic staff of the respondent Institute represented for a salary revision. In 1976 some non-academic staff were promoted. In 1977 the respondent organisation purported to create a new post in the non-academic section and designated them as "Laboratory Superintendent". This post was equal in salary to the lecturers post but was not equal in status for other relevant benefits and till date not classified in the IIT statutes as academic or non-academic. It is averred that the petitioners strongly objected to this move and substantial correspondence occurred. The petitioners in 1980 and thereafter from time to time were promoted to the newly created post of Laboratory Superintendent. They, however, were ordered to continue to perform their original academic duties. The petitioners continued to conduct classes wherein they teach/instruct the students in the physics department, conduct the semester examination, take the viva voce examinations and award marks to the students. They

continue to evaluate and/or examine papers of students appearing for the IIT entrance examination. The petitioners duties have remained essentially unchanged. It is pointed out that the Lecturers are in fact engaged in similar teaching activities as the petitioners i.e. conducting lectures, tutorials, setting papers evaluating examination papers, etc.

. It is then submitted that apart from Physics Department there are Lab Superintendents in other departments as well e.g. Engineering. The Lab Superintendent in the Engineering Department, however, are doing work which is substantially different from that done by the petitioners. In that they only help maintain the laboratory and the instruments etc. They are not essentially engaged in teaching activities and do not assess journals or assess students at the semester exams. etc. or perform academic duties. Thus though they are similarly labelled the petitioners work is and always has been substantially different from other laboratory superintendents in the other department. The petitioners rely on Exhibit "B" which is a comparative statement of the work of Lab Superintendent in Engineering Department as against the petitioners.

6. The petitioners contend that considering the above they had strongly protested against their being labelled as Laboratory Superintendents. As they received no response to their repeated protests

against the above and their promotion in the Non-Academic Section they had filed a Writ Petition being Writ Petition No.1757 of 1988 wherein they had prayed the reliefs as set out earlier for striking down their transfer to the non-academic section, for re-classification of the petitioners as academic staff and for promotion of petitioners to the rank of scientific officer in the academic section.

7. The 2nd respondent i.e. the Ministry of Human Resources, Government of India vide intimation dated 27th July, 1998 and 31st July, 1998 following the recommendations of the 5th Pay Commission and University Grants Commission (UGC) revised the pay of teachers in Central Universities. By intimation dated 31st August, 1998 the Ministry wrote to the Directors of all IIM's, IIT's and IISc. proposing an increase in the age of superannuation inter alia of academic staff as set out therein from 60 to 62 years. As per the said intimation the age of superannuation of "academic staff" (Scientific/Design Staff and others) including Personnel of Registry, Library and Physical Examination had been increased from 60 to 62 subject to the conditions as laid down as to how the decision was to take effect. The earlier Notifications of 27th July, 1998 and July 31, 1998 spoke of an increase in the age of superannuation of teachers. The order of 31st July, 1998 intimated to the Director, IITs, IIms, IISc., that the question of increasing the age of superannuation of the academic staff

(scientific/design staff and others) including personnel of Registry, Library and Physical Education in IITs, IIMs and IISc. from 60 to 62 years was subject to the conditions as set out therein. The Board of Governors of the Respondent at the meeting held on 3rd October, 1998 and pursuant to the decision dated 31st August, 1998 proposed to amend Statute 13(2) by adding sub paras (D) and (E) in pursuance of the HRD Ministry directive dated 31st August, 1998 with regard to the increased age of superannuation in respect of faculty members and members of the academic staff (scientific/design staff and others) including personnel of Registry, Library and Physical education. By intimation dated 6th November, 1998 the 2nd respondent addressed to the Secretary, University Grants Commission while revising the pay scales in view of the enhanced age of superannuation intimated that the enhanced age of superannuation was applicable to Registrars, Librarians, etc. and such other employees who were being treated at par with the teachers and those whose age of superannuation was 60 years. By subsequent communication of 30th March, 1999 a clarification was issued to the 2nd respondent that the position as stated in para.4 requires clarification and in view of that it was clarified that the increase in the age of superannuation from 60 to 62 years would be applicable only to those categories of employees of IITs, IIMs and IISc. who have been treated at par with the teachers and whose age of superannuation was 60 years.

. Reference is then made by the petitioners to an affidavit filed by Dr. Awale, Joint Educational Adviser (Technical), Ministry of Human Resource Development, to a Writ Petition No.5363 of 1998 filed in the Delhi High Court. It is the contention of the petitioners that an order came to be passed by Delhi High Court on 22nd April, 1999 holding that the directive dated 31st August, 1998 covered those categories of employees who were treated at par with teachers meaning thereby that anyone fell in the category of teaching staff and whose age of superannuation was 60 years would be entitled to the benefit of the same. It is then set out at that the Ministry of Human Resources Development by the letter of 30th March, 1999 clarified that the enhanced age of superannuation was also to be applicable to the Registrars, Librarians, physical educational personnel, controllers of examinations and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years. It is then set out that the meeting of the Board of Governors of the respondent dated 15th June, 1999 it was resolved that the statutes governing the terms and conditions of the respondent employees was to be amended in line with the decision of the Government of India. By that the age of superannuation in terms of amended statute 13(2)(E) provided for increase in age of superannuation and was to retire at the age of 62 years. The petitioners

pointed out that such amendment to the statutes requires the assent of the President of India before being incorporated as part of the statute of the Respondent.

8. The petitioners contend that they made representation dated 16th November, 1999 to the Minister, HRD, Department of Education, New Delhi drawing his attention the fact that the nature of their work was similar to that of the teachers (Faculty). They cited various instances as to why it was so. It is, therefore, submitted that as the petitioners are also doing the work of academic nature their age of superannuation ought to have been increased to 62 years.

9. It is then averred that the respondents have extended coverage of the directive to various academic, administrative and technical staff all of whom admittedly are not engaged in any teaching activity whatsoever and/or are not on par with the teaching staff. Reliance is placed on Exhibit "I" to point out the nature of work being done by various other categories whose age of superannuation have been increased from 60 years to 62 years. It is, therefore, set out that the failure on the part of the respondents to apply the enhanced age to the petitioners is ex-facie arbitrary and discriminatory and without authority of law.

10. On behalf of the respondent No.1 an affidavit has been filed by Ram Deo Mishra, Assistant Registrar (Legal and Administration). No reply has been filed on behalf of the respondent No.2. It is firstly averred that the filing of the petition is hit by the provisions of res judicata and constructive res judicata as Writ Petition No.1757 of 1998 has been filed and the issues raised therein are substantially the same. This contention has to be rejected at the threshold as Writ Petition NO.1757 of 1998 has not been disposed of and is being heard and disposed of by the present judgment. It may only be mentioned that this affidavit was filed at the stage when interim relief was also prayed. However, subsequently no additional affidavit has been filed. Dealing with the merits of the matter it is denied that the post held by the petitioners is essentially non-teaching assignment. It is set out that the teachers are those who are recruited by Respondent No.1 through open selection on the recommendations of the Statutory Selection Committees. The teachers are also vacation officers. The petitioners are not so. The petitioners originally belonged to Group-B in the position of JRA, JTA, SRA and STA. It is only as a matter of promotional avenue that the Institute had promoted the petitioners to the Supernumerary position of Laboratories Superintendents. The Laboratories Superintendent as such is not a cadre. The same does not figure in the IIT Statute. It is set out that the scale of pay and qualifications are and cannot be the

sole basis to call any one a teacher. It is then set out that the petitioners who are all Lab Superintendents are not covered by the orders of the Government of India for being extended the benefits of the age of 62 years. It is then denied that the Lab Superintendents are classified as Academic. It is then set out that most of the petitioners originally belonged to Group B as Senior Research Assistant. It is denied that any understanding was given to the petitioners that they would be confirmed in the academic section. It is then averred that the respondent No.1 is basically an Educational Institute and almost all activities thereof are related to Academic areas. While teachers are appointed as teachers for evaluating the students, others such as STAs, SRAs and Research Students assist the teachers from time to time as the need arises and/or situation warrants in the laboratory and other work. Such participation is on account of the fact that respondent No.1 is basically an educational institute. Such participations are not a teaching activity in character. The petitioners, it is pointed out, have been given benefit of promotion and are in Group B. They have come upto Group-A only through promotional avenues. They never competed and were never required to do so with the outsiders to get Group-A position. On retirement of the petitioners, the vacancy will fall at the level of Group-B. It is denied that the petitioners ever objected to being designated to the post of Lab Superintendent and/or that they did not

want the post of Lab Superintendent. It is then sought to be explained that in the laboratory for practicals not only the Laboratory Superintendent but many other employees and Ph.D., students also assist the teachers in the work. The same does not and cannot confer on the petitioners or such other persons the position of teachers. It is sought to be pointed out that the petitioners themselves are seeking to make distinction between them and the Laboratory Superintendents in other departments i.e. in Engineering Departments. A teacher remains a teacher irrespective of the departments to which he is deputed. Similarly, a Laboratory Superintendent shall remain a laboratory Superintendent though he may be deputed to different Departments. It is then set out that the petitioners had applied for being assessed in the supernumerary position of Laboratories Superintendents. They accepted the position of Laboratories Superintendents after being assessed and offered the same. It is then denied that the petitioners were ever transferred to the non-academic section and/or that they wanted reclassification as "Academic". It is reiterated that the categories of staff to whom benefit of 62 years as superannuated has been given have always been in the scales of teachers and qualifications prescribed by the University Grants Commission, created by the Government of India.

. The statutes, it is contended, have been amended by the Board and forwarded to the Government

of India. In passing it may be mentioned that in Writ Petition N.1757 of 1988, the petition proceeded on the footing that the petitioners who were earlier in the academic section have been moved out in the non-academic section. In that petition also reply has been filed by Ram Deo Misra. In the affidavit of Ram Deo Misra it is pointed out that it is on a demand being made by the non-academic staff of which the petitioners in Writ Petition No.1757 of 1988 were members that the upgraded post of Laboratory Superintendents were created solely to help the Junior Research Assistants and Senior Research Assistants so that they are not stagnated. The non-academic staff have accepted the position and the same is binding on the petitioners.

11. The petitioners have also submitted a compilation wherein material has been placed to show the teaching work which the petitioners were called upon to perform from time to time including the summer courses. It is not necessary to extensively refer to the various documents.

12. At the hearing of the petitions on behalf of the petitioners it is submitted firstly that persons not doing teaching work as specifically averred in paragraph 22 of the Writ Petition No.922 of 2000 like Registrar, Deputy Registrar and Assistant Registrar, Assistant Librarian and Sport Officer who in terms of the statutes were classified not as academic staff

their age of superannuation has also been increased to 62 years. The respondent No.2 has not filed any reply opposing the said averments or explaining the circumstances under which the persons other than teachers were also given the benefits of increase in the age of superannuation from 60 years to 62 years. It is, therefore, submitted that exclusion of the petitioners is arbitrary and discriminatory. The petitioners, therefore, are also entitled to be given the benefit in the age of superannuation from 60 years to 62 years.

14. It is next submitted that as junior assistant and Senior Assistant they were classified as academic staff, the post to which they have been promoted namely Laboratory Superintendent is merely an upgradation of the same post. Averments in paragraph 10 that they continued to do the duties which they were earlier performing as junior research assistant have not been specifically denied. It is, therefore, submitted that once they were academic staff merely because of the upgradation of that post will not result in a post which was designated as academic being converted into a non-academic post. In terms of Statute 11 of the Statutes the various posts have been designated as academic, technical and administrative. The post of Scientific Officer, Research Assistants, Librarian, Deputy Librarian are academic posts and such other academic posts as may be decided by the Board. The newly created post of Laboratory

Superintendents in terms of the Statutes have not been categorised either as academic, technical or administrative. However, considering that the Research Assistants have been designated as academic and these are the very posts which are upgraded to that of Laboratory Superintendent and considering the material on record there is no reason why the said post also should not be treated for all purposes as academic. Section 26(g) provides the classification, the method of appointment and the determination of the terms and conditions of the service of teachers and other staff of the Institute. In terms of Section 27 the first Statutes of each Institute shall be framed by the Council with the previous approval of the Visitor.

13. On the other hand on behalf of the respondents the learned Counsel contends that the petitioners themselves since the time of their appointment to the post of Laboratory Superintendents by promotion have described themselves as non-teaching staff. Various representations made by the petitioner to that effect have been pointed out. It is, therefore, submitted that the petitioners are now stopped by their conduct from contending that they are academic staff. Reliance is placed in judgment in the case of **Suneeta Aggarwal v. State of Maharashtra & Ors., (2000) 2 S.C.C. 615**. It is then submitted that the supernumerary posts of Laboratory Superintendents were created in the Technical Section in the year 1977.

Relief therein is to the purported transfer of the petitioners from academic to non-academic. Their learned Counsel further points out that Writ Petition No.1757 of 1988 proceeded on the footing that the petitioners were transferred from academic Section to non-academic section and in this view of the matter there was no question of respondents replying to the averments. Much will not turn on that discussion considering the contentions as raised and are being considered in Writ Petition No.922 of 2000. Even if the petitioners in Writ Petition NO.1757 of 1988 had accepted their promotions if in law their fundamental right is violated there can be no plea of estoppel. It is settled position in law that there can be no estoppel in law. The judgment in the case of Suneeta Aggarwal (supra) to that extent would be of no assistance to the respondents. The first contention must, therefore, rejected.

14. We may first deal with the contention that the relief as claimed is barred by laches. In so far as laches are concerned that issue really would arise at the stage of admission. It is at that stage the respondents must raise the issue if they had notice of admission of petition to raise the plea. The records would show that the respondents were heard at the stage of admission. In Writ Petition NO.1757 of 1988 the question of laches was kept open. It will, therefore, be open to the respondents in Writ Petition No.1757 of 1988 to raise the plea of laches. In so

far as Writ Petition NO.922 of 2000 is concerned there are no laches. The issue of laches will, therefore, be considered only in the event any reliefs have to be granted in Writ Petition No.1757 of 1988.

15. With that we come to first contention as raised on behalf of the petitioners herein. The specific challenge is that even in respect of non-academic posts the respondent No.2 has increased the age of superannuation from 60 years to 62 years. The petitioners while working in the feeder posts from which they were promoted were designated as academic posts. The respondent NO.2 has not filed any reply explaining as to how the petitioners who are holding the post of Laboratory Superintendents are excluded from the Government decision to increase the age of superannuation from 60 years to 62 years whereas other non-academic staff like Registrars, Deputy Registrar, Assistant Registrar, Assistant Librarian, Sports Officer their age of superannuation has also been increased from 60 years to 62 years. The Statutes of the Indian Institute of Technology, Bombay, have classified the members of staff into academic, technical and administrative. If this is considered then the posts of design staff are not included in academic. Registrar, Deputy and Assistant Registrars are included in administrative though Librarian, Deputy Librarian are included in academic. The post of Laboratory Superintendent is not shown similarly. Sports Officer is not shown in academic staff whereas

physical training instructor is included in technical. However, in respect of these posts also the age of superannuation has been increased from 60 years to 62 years. The posts of Research Assistant which have been held by the petitioners were shown as academic. It was on the respondent No.2 to disclose the material on the basis on which the non-academic staff i.e. non-teaching staff have been given the benefit of increase in the age of superannuation and persons like the petitioners who were earlier holding in the lower posts classified as academic staff have been excluded. In the absence of any reason the action of the respondent No.2 in excluding the persons like the petitioners holding the post of Laboratory Superintendents from getting the benefit of increased age of superannuation is clearly arbitrary and hence violative of Articles 14 and 16 of the Constitution of India. The petitioners, therefore, would be entitled to the said benefit from having the age of superannuation fixed as 62 years instead of 60 years. Once that be so the petitioners if they have retired would be entitled to the benefits from the date of their superannuation till the date when they would have reached the age of 62 years and superannuated. In the event any petitioners who have not yet reached the age of 62 years they will be entitled to be reinstated to the post or if the respondents do not reinstate them then to the benefits of salary and other consequential benefits till they reach the age of 62 years. Needless to say that the respondent No.2

would make available the grants to the respondent No.1 to be paid to the petitioners for clearing the arrears of salary and other consequential dues. This amount will be released within a period of four months from today.

15. Really speaking once the Court has come to the conclusion that the petitioners are entitled to the reliefs on the very first ground itself it is really not required to answer the second contention. However, as pointed out by the petitioners the posts of Research Assistant have been designated as academic. The posts of Laboratory Superintendents were created as promotional avenues for the Research Assistants on account of stagnation and are purely supernumary posts. There is no dispute that academic staff would mean teaching staff. The Workshop Superintendent is also included amongst the academic staff as also Librarian, Deputy Librarian. There is power in the Board to include such other academic posts. It was averred by the petitioners and that has not been specifically denied in paragraph 10 of the petition that the work which they were earlier doing to conduct classes, wherein they teach/instruct the students in the physics department, conduct the semester examination, take the viva voce examination and award marks to the students and their work in the Laboratory which was essential an integral part for the students to pass the Semester was continued to be done by them in the promotional post. While working

as Research Assistants they were doing the same job. While working in the promotional post of Laboratory Superintendent they continue to do the same work. There is no resolution produced by the Board which has the approval of the Visitor to show that these posts were included in the technical section. Even if they were included in technical section considering the observations made by the Apex Court while setting aside the interim order of this Court this Court was called upon to take into account the duties discharged by the Laboratory Superintendents and whether they can be held to be academic staff. This issue was open for consideration in Writ Petition NO.922 of 2000. No additional material has been placed before us to show as to why on promotion they should not be treated as academic staff when on the lower post they were being treated as academic staff. Even otherwise the material placed on record and in our opinion it is substantial would show that they are discharging academic function. Apart from that it may be noted that as Laboratory Superintendents the petitioners are doing work directly connected with the academic course of the students. It is not something incidental or peripheral to academic training. Taking all these facts into consideration and more specifically that the petitioners were earlier designated as academic staff it was upto to the respondents to show why on their promotion they had to be designated from academic to non-academic when the work they were doing continue to be the same. There is no material. In

our opinion considering the Petition will have to be allowed on that count.

16. Having said so the petitioners will be entitled to the relief in Writ Petition No.922 of 2000. The issues raised in Writ Petition No.1757 of 1988 become academic and consequently no relief need be given in that petition as otherwise the petitioners in those petition who are petitioners in Writ Petition No.922 of 2000 will be entitled to the relief as sought for in Writ Petition No.922 of 2000. In the light of that the following order:-

(i) Rule made absolute in Writ Petition No.922 of 2000 in terms of prayer clauses (a) and (b) with the further direction that the respondent No.2 to release the necessary grants to the respondent No.1 to enable the respondent NO.1 to pay the arrears of salary and other benefits to the petitioners within a period of four months from today. In turn the respondent No.1 to pay to the petitioners the amount so released on release of grant by respondent No.2 within four weeks of such release.

(ii) In the event any of the petitioners are entitled to reinstatement the respondents are directed either to reinstate the said petitioners or pay or give them the benefits which they will be entitled to pay upto the age of their superannuation.

(iii) Writ Petition No.1757 of 1988 stands disposed off.

(iv) No order as to costs.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Associate of this Corut.

(F.I.REBELLO, J.)

(S.R. SATHE, J.)

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2.Union of India, through the Ministry)

of Human Resources Development,)

Department of Education, New Delhi)..RESPODNENTS

Mr. J.P. Cama i/b. Mr. K.P. Anilkumar for the Petitioners in both petitions.

Mr. C.U. Singh with Mr. K.P. Jain i/b. Bhaishankar Kanga & Girdharlal for Respondents in both petitions.

CORAM: F.I. REBELLO & S.R.SATHE, JJ.

DATE : 7th July, 2004

For the reasons separately recorded in the judgment, the Court passed the following order:-

P.C.:

(i) Rule made absolute in Writ Petition No.922 of 2000 in terms of prayer clauses (a) and (b) with the further direction that the respondent No.2 to release the necessary grants to the respondent No.1 to enable the respondent NO.1 to pay the arrears of salary and other benefits to the petitioners within a period of four months from today. In turn the respondent No.1

to pay to the petitioners the amount so released on release of grant by respondent No.2 within four weeks of such release.

(ii) In the event any of the petitioners are entitled to reinstatement the respondents are directed either to reinstate the said petitioners or pay or give them the benefits which they will be entitled to pay upto the age of their superannuation.

(iii) Writ Petition No.1757 of 1988 stands disposed off.

(iv) No order as to costs.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Associate of this Corut.

(F.I.REBELLO, J.)

(S.R. SATHE, J.)